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EXAMINER

ALEXANDER, REGINALD

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3742

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/587,226
Filing Date: July 24, 2006
Appellant(s): MAGG ET AL.

Andre Pallapies
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08 February 2010 appealing from the Office action mailed 10 August 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,030,784	FIORI	04-1962
3,561,349	ENDO	02-1971

5,598,764

BAMBI

02-1997

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 17, 29, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Fiori.

There is disclosed in Fiori a brewing chamber of a coffee machine using a coffee pod 72, the chamber comprising: a top part 30 having openings 76 for the passage of water, the top part being placed on a housing 24; an outer seal or band 36 which secures or supports top part 30 in position so as to allow, during the application of hot water, top part to form a seal when expanded; and a bottom part 48, the bottom part containing the coffee pod and accepting the top part upon expansion; wherein the top part is formed as a single monolithic piece of elastic material.

Claims 23-27 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiori in view of Endo.

Endo discloses the use of concentrically arranged ribs 22 on a top part 2 of a brewing chamber. The ribs providing an improved seal between the top part and a coffee package used within the brewing chamber, as the coffee within the package expands upon contact with hot water.

It would have been obvious to one skilled in the art to provide the top part of Fiori with the ribs taught in Endo, in order provide an improved seal between the top part and coffee pod during the entry of hot water.

Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fiori in view of Bambi.

Bambi discloses the use of a centrally located, flexible bulging element 9H for contacting a filter cartridge in a brewing chamber.

It would have been obvious to one skilled in the art to provide the top part of Fiori with the bulging member taught in Bambi, in order to provide a compression force onto the beverage pod.

(10) Response to Argument

Rejection of claims 17, 29, 31 and 32, 102 Fiori

Appellant argues that band 36 of Fiori is not part of the brewing chamber, and therefor cannot be the claimed outer seal.

Clarification of the elements of Fiori and their function is here provided. The top part 30 of Fiori is made of a single monolithic piece of elastic material. The material extends beyond the periphery of the pod supporting bottom part 48. Upon expansion of the top part it forms an outer seal with the bottom part. It is this reason that the top part is considered to be formed as a single piece of elastic material having openings which allow the passage of water and an outer seal (deformable periphery). The fact that the top part is supported by an outer band 36 and cover member does not preclude the fact that it is a single monolithic piece of elastic material. Appellant's top part is itself supported within a cover member or housing 62 (page 8, line 4).

Rejection of claims 23-27 and 36, 103 Fiori in view of Endo

Appellant argues that the Endo reference fails to remedy the deficiencies of Fiori, such as the claimed outer seal. While this may be the case, the response above describes how Fiori satisfies the limitation of the claimed outer seal. Thus, Endo is provided for its disclosure of the claimed elevated surface which extends from the top portion on a side facing the brewing chamber, as required in dependent claim 23. In regards to claim 24, the ribs 22 have gaps between them that are defined by the space between concentric ribs. The spacing of the Endo ribs allows for the formation of seals at more than just one location with the coffee package. Thus, it is a benefit to have gaps between the ribs and not a inhibit the purpose of the Endo ribs as suggested by Appellant. In regards to claims 27 and 36, in using the ribs of Endo with the top part disclosed in Fiori, with there being so many openings in the Fiori top part it would be assumed that the gap between the ribs would contain openings.

Rejection of claims 33 and 34, 103 Fiori in view of Bambi

Appellant argues that the Bambi reference fails to remedy the deficiencies of Fiori, such as the claimed outer seal. While this may be the case, the response above describes how Fiori satisfies the limitation of the claimed outer seal.

Appellant argues that Bambi does not disclose a push-off element bulging downwardly from the top part and providing a downwardly biasing force against the coffee pad. Appellant states that element 9H of Bambi is a perforated disk that is not described as providing a downwardly biasing force against a coffee pad. A view of the sole figure in Bambi and a disclosure at column 2, leads to the assumption that element

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9H, which is cupped downwardly, provides a downward force to filter 11C as it is placed thereupon during use. This arrangement meets the structural and functional requirements of Appellant's claims 33 and 34. While Bambi discloses the use of a screw to support element 9H, it is its teaching of a bulging arrangement on a top part of a brewing chamber that is required. Bambi teaches that having a centrally disposed, downwardly bulging push-off element could solve a particular problem. The Fiori reference if provided with such an element or forming such an element, would serve to solve the particular problem.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Reginald L. Alexander

/Reginald L. Alexander/

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